

CHAPTER 43I
CRIMINAL BACKGROUND INVESTIGATIONS: NURSE AIDES, PERSONAL
CARE ASSISTANTS AND ASSISTED LIVING ADMINISTRATORS

SUBCHAPTER 1. GENERAL PROVISIONS

8:43I-1.1 Scope and authority

- (a) This chapter sets forth the procedure by which persons seeking certification as a nurse aide, personal care assistant and/or certified assisted living administrator obtain the criminal background check mandated by law. The chapter also sets forth the procedure that currently certified nurse aides, personal care assistants and assisted living administrators must complete in order to renew their respective certifications for another two-year period.
- (b) This chapter provides for conditional certification for prospective nurse aides, personal care assistants and assisted living administrators.
- (c) This chapter provides for a fair hearing process, in compliance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. for those individuals who are denied a determination of rehabilitation after the submission of clear and convincing evidence attesting to rehabilitation as defined by this chapter.
- (d) The Criminal Investigation Unit of the Department is authorized and empowered to perform all duties consistent with this chapter and N.J.S.A. 26:2H-83 through 87 and 26:2H-7.17 through 7.21.

8:43I-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Applicant” means any person making application to the Department for certification as a nurse aide, personal care assistant or assisted living administrator, or any person seeking to renew a certificate as a certified nurse aide, certified personal care assistant or certified assisted living administrator.

“Assisted living administrator” means a person certified by the Department pursuant to N.J.A.C. 8:36-1.5 to oversee the daily operations of an assisted living program or residence as defined by N.J.S.A. 26:2H-7.15, but does not include a person licensed as a licensed nursing home administrator pursuant to N.J.S.A. 30:11-20 et seq..

“Commissioner” means the Commissioner of Health and Senior Services or his or her designee.

“Conditional certification” means a temporary certification of a nurse aide, personal care assistant or assisted living administrator subject to the scope and limitations established by this chapter.

“Criminal history record” means information obtained from, but not limited to, the Division of State Police, the Federal Bureau of Investigation, courts, law enforcement and correctional agencies, and other governmental agencies pertaining to arrests and convictions for violation of any law.

“Criminal history record background check” means the information obtained during an investigation of an applicant for certification including the data described in the definition of “criminal history record” above.

“Criminal Investigation Unit” means a unit within the Department charged with performing criminal history record background checks and performing the tasks required of the Department by this chapter and State law.

“Department” means the New Jersey Department of Health and Senior Services.

“Disqualified” means that an individual seeking certification shall be barred from such certification. In the case of an individual seeking to renew a certification, the person shall be barred from renewing such certification which shall have the effect of revocation of such certification. In the case of an individual who is currently certified and who is the subject of a conviction of any disqualifying offense subsequent to their last criminal record history background check, the term means revocation of any such certification.

“Disqualifying offense” means those offenses and crimes which preclude an individual from certification or continued certification, as specifically defined by this chapter.

“Elderly patient, resident or client” means any person, 60 years of age or older, who is receiving care, treatment or services in or by any health care facility utilizing any personnel covered by this chapter, in any aspect.

“Employer” means a health care facility utilizing any person in the capacity of nurse aide, personal care assistant or assisted living administrator.

“NATCEP” means a nurse aide training and competency evaluation program approved by the Department

“Nurse aide” means a person who has completed a mandatory training program and is certified by the Department to perform such duties as required by N.J.A.C. 8:39-43.

“PCATCEP” means a personal care assistant training and competency evaluation program approved by the Department

“Personal care assistant” means a person who has completed a mandatory training program and is certified by the Department to provide care in an assisted

living residence or program, a comprehensive personal care home, or through a program authorized by the Department's Community Care Programs.

"Qualified" means a person who has been determined to either have no disqualifying convictions, or has been granted a determination of rehabilitation in accordance with this chapter.

"Regular contact" means the provision of a service by persons to a patient, resident, client or group of patients, residents or clients that involves one or more of the following as part of the person's job description:

1. Coordination of, direct supervision of, or provision of personal care, nursing or health related services;
2. Routine physical contact, such as hands-on physical assistance;
3. Activity that requires the person, while providing personal care, nursing, health related services, or hands-on physical assistance to be routinely alone with patients, residents or clients and to routinely have access to patients', residents', or clients' personal property; or
4. Any routine service or activity designated by the facility or employer as regular contact. This may be through job descriptions, policy and procedure or actual practice.

"Unsupervised contact" means any contact with an elderly patient, resident or client that occurs without direct supervision by a person licensed, certified or authorized to perform the duties required of the person.

8:43I-1.3 Obtaining materials

All materials, applications and forms referenced in this chapter may be obtained without payment of any fee by submitting a request in writing to:

Criminal Investigation Unit
PO Box 359
Trenton, NJ 08625-0359

Requests are accepted by fax at (609) 341-3552. Requests are accepted by e-mail at lrc@doh.state.nj.us (please include the phrase "CBI" in the subject line).

8:43I-1.4 Submission of social security numbers

(a) Pursuant to the Privacy Act of 1974 (US P.L. 93-579) notice is hereby given that the submission of social security numbers is mandatory, as required by N.J.S.A. 2A:17-56.44(e) and as authorized by 42 U.S.C. 666. Nurse aide, personal care assistant and assisted living administrator certifications are "licenses" as defined by N.J.S.A. 2A:17-56.52, and submission of social security numbers is mandated by law. Social security numbers will be utilized only for the purposes of:

1. Establishing a unique identifying number for applicants and certified personnel;

2. Coordinating the criminal history information in the required criminal history registry and the various licensing and certification databases in which the person holds a license or certification; and
 3. Complying with the provisions of the child support enforcement laws, N.J.S.A. 2A:17-56.8 et seq.
- (b) Except as required by N.J.S.A. 2A:17-56.44(e), which mandates that the Department participate in the exchange of licensee data with the Automated Child Support Enforcement System, social security numbers shall not be disclosed as part of any record, and are not subject to release under the Open Public Records Act , N.J.S.A. 47:1A-1 et seq.
- (c) No person shall submit a fictitious social security number on any application required by this chapter. Intentional submission of a fictitious social security number is not permitted, and shall constitute submission of a falsified application.

SUBCHAPTER 2. NURSE AIDES

8:43I-2.1 Application

- (a) Each applicant for certification as a nurse aide shall complete and submit an application/affidavit on a form provided by the Department which shall contain:
1. Personal demographic information containing the applicant's name, mailing address, date of birth, social security number, sex, telephone number and either:
 - i. The name of the applicant's employer if the applicant is employed by a health care facility performing duties as a nurse aide or in a related position; or
 - ii. The name of the person's NATCEP;
 2. An attestation under oath that the applicant has not been convicted of any disqualifying offenses as defined by N.J.A.C. 8:43I-2.3;
 3. The applicant's original and legal signature; and
 4. The seal and signature of a notary public or other person authorized by law to administer oaths.
- (b) Incomplete applications will not be accepted for processing, and will be returned to the applicant for completion. No criminal history record background checks will be released unless the Department is in receipt of a completed application.
- (c) Upon receipt of a properly completed application, the Department will issue a written notice to the applicant indicating if the applicant is qualified for a conditional certification pursuant to N.J.A.C. 8:43I-2.5. Applicants shall present this notice to their employer or prospective employer.

8:43I-2.2 Fingerprint processing

- (a) Each applicant for certification and each person seeking to renew their certification shall submit to a fingerprinting process. Each person shall comply with the procedures established by the Division of State Police pursuant to N.J.A.C. 13:59 for obtaining readable fingerprint impressions.

(b) Each person required by this subchapter to submit to the fingerprinting process shall be provided with a form which will permit the applicant to obtain the fingerprinting services without prepayment of a fee. These forms are restricted to use by nurse aide applicants and certified nurse aides seeking to renew their certificates.

(c) The Department may utilize an archived image of fingerprints previously submitted for certification as a nurse aide in lieu of the candidate reporting to a fingerprint site. Individuals seeking to renew their certificate are deemed to consent to a retransmission of their fingerprint images, as required by N.J.S.A. 26:2H-83 et seq.

(d) No certificate shall be issued, no conditional certification granted or certification renewed unless the person has complied with the provisions of this subchapter, including, but not limited to, N.J.A.C. 8:43I-2.1 and 2.2.

8:43I-2.3 Disqualification of applicants and persons seeking to renew certifications

(a) A person shall be disqualified from certification or renewing their certification as a nurse aide if they have been convicted of any of the following crimes and offenses, unless the person has demonstrated rehabilitation in accordance with N.J.A.C. 8:43I-2.4:

1. In New Jersey, any crime or disorderly persons offense:
 - i. Involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:11-1 et seq., 2C:12-1 et seq., 2C:13-1 et seq., 2C:14-1 et seq., or 2C:15-1 et seq.;
 - ii. Against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:24-1 et seq.;
 - iii. Involving theft as set forth in N.J.S.A. 2C:20-1 et seq.; or
 - iv. Involving any controlled dangerous substance or controlled dangerous substance analog as set forth in N.J.S.A. 2C:35-1 et seq., but not including those offenses defined at N.J.S.A. 2C:35-10(a)4 (possession of less than 50 grams of marijuana and possession of less than five grams of hashish).
2. In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in N.J.A.C. 8:43I-2.3(a)1, above.
3. For the purposes of this chapter, conviction of an inchoate act as defined by N.J.S.A. 2C:5-1 and 2C:5-2, related to any crime or disorderly persons offense listed in (a)1 above shall be construed to be a conviction of the offense attempted or conspired to.

(b) A person shall be disqualified from certification if the person refuses to consent to, or cooperate in, the securing of a criminal history record background check, inclusive of failure to respond to written requests for additional information or failing to complete the required fingerprint appointment to obtain the fingerprint impressions needed to comply with this chapter.

(c) A person shall be disqualified from certification if that person files a false sworn statement in the application described at N.J.A.C. 8:43I-2.1(a), and shall not be permitted to request a determination of rehabilitation as defined at N.J.A.C. 8:43I-2.4.

8:43I-2.4 Requests for a determination of rehabilitation

(a) Any applicant or currently certified nurse aide convicted of a disqualifying offense listed at N.J.A.C. 8:43I-2.3(a) may request that the Department issue a determination of rehabilitation which would permit the person to obtain or retain certification as a nurse aide. The standard for the issuance of a determination of rehabilitation is that the person affirmatively demonstrates rehabilitation by the production of clear and convincing evidence. The Department must weigh the following factors when evaluating a request for a determination of rehabilitation, which must be clearly documented by the applicant or nurse aide:

1. The nature and responsibilities of the position which the applicant or certified nurse aide would hold, has held or currently holds, as the case may be;
2. The nature and seriousness of the offense(s);
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the person at the time of the offense;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense; and
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the applicant or nurse aide under their supervision.

(b) The following materials are considered when the Department evaluates the degree of rehabilitation of the applicant with a criminal history:

1. Each applicant requesting a determination of rehabilitation shall submit to the Department sufficient information in the request for a determination of rehabilitation or the request will be denied or delayed. The following documents are required:
 - i. A personal statement which describes, in detail, each offense, including the details of the offense and the circumstances of offense. The statement shall also contain a statement which describes the activities of the applicant since their conviction including, but not limited to:
 - (1). Changes in social circumstances;
 - (2). Any additional vocational and/or educational schooling;and
 - (3). Any substance abuse counseling.
 - ii. A letter from either the applicant's NATCEP (if the applicant is applying for certification) or the health care facility that employs the nurse aide (if renewing) which provides an assessment of the

- performance of the skills and safety of the applicant and/or nurse aide;
 - iii. Proof of drug counseling and/or evaluation, if the offense is related to unlawful possession or use of controlled dangerous substances; and
 - iv. If the applicant has ever been on probation or parole, a letter from the applicant's probation or parole officer indicating that the applicant is in compliance with the terms of their supervision, or has been released.
2. In addition, the applicant may submit other documents in support of a determination to include, but not limited to:
- i. Personal (non-work related) references;
 - ii. Statements of support from members of the clergy;
 - iii. Awards and certificates earned; and
 - iv. Any other documentation which the candidate feels may assist the Department in reaching a favorable conclusion on behalf of the Department.
- (c) If the Department issues a determination of rehabilitation to an applicant or nurse aide, the applicant or nurse aide shall not be required to submit the information described in (a) above, in future renewal processing. This shall not apply if the person has been convicted of a disqualifying offense subsequent to the issuance of the determination of rehabilitation, in which case the applicant or nurse aide shall comply with the provisions of (a) above.
- (d) A person disqualified from certification for filing a false sworn statement in accordance with N.J.A.C. 8:43I-2.3(c) shall not be permitted to request a determination of rehabilitation.
- (e) A person disqualified from certification for failure to comply with the requirements of this chapter in accordance with N.J.A.C. 8:43I-2.3(b), except those disqualified from filing a false application pursuant to N.J.A.C. 8:43I-2.3(c), shall not be permitted to request a determination of rehabilitation until such time as the person has fully complied with the requirements of this chapter. Such compliance may include, but is not limited to, obtaining a current or updated criminal history record from the Division of State Police or the Federal Bureau of Investigation, or both.

8:43I-2.5 Conditional certification

(a) An applicant for certification as a nurse aide may be issued a conditional certification and may be employed in the capacity of a nurse aide for a period of up to 120 days, as follows:

1. The Department will issue a conditional certification to the applicant for a period not to exceed 120 days if the application demonstrates that the candidate has provided a sworn statement indicating that her or she has not been convicted of any of the offenses listed at N.J.A.C. 8:43I-2.3, and has not been placed on the Department's Nurse Aide Abuse Registry pursuant to N.J.A.C. 8:39-43.7(b).

2. All conditional certification documents issued by the Department shall bear the issue and expiration date, and are non-renewable.

3. Nothing in this chapter shall be construed as to permit an individual with a conditional certification authority to perform those duties of a nurse aide for which the applicant has not yet been trained or authorized to perform.

4. Nothing in this chapter shall be construed as to permit an individual to remain employed as a nurse aide for more than 120 days prior to successfully completing a NATCEP and passing the State skills and written or oral exam as required by 42 U.S.C. 1396r(b)5 or 1395I-3(b)5

5. If a conditionally certified applicant is disqualified from certification, the Department shall issue a notice to the applicant and employer, if known. The notice to the employer shall state that the applicant is disqualified, but shall not disclose the offenses upon which the disqualification is based.

i. Upon receipt of the notice, the employer shall immediately remove the person from duties which require regular contact with patients, residents or clients. The person shall not have unsupervised contact with any patient, resident or client, nor shall the property of those persons be entrusted to any disqualified applicant.

ii. If the employer receives notice from the Department that the applicant has filed for a hearing to contest the accuracy of their criminal history record background investigation, the person may remain employed pending a final decision on the person's petition, but the employer shall not permit the person to have unsupervised contact with elderly patients, residents or clients.

iii. The Department will notify the employer of any requests for hearings, and the results of any hearings, within five days of receipt of such request or disposition.

8:43I-2.6 Convictions occurring after initial criminal record history background check clearance

(a) The Department will be notified by the New Jersey State Police of convictions occurring after the applicant is initially qualified pursuant to this chapter, in accordance a system developed under the authority of N.J.S.A. 26:2H-83(a).

(b) Once the Department has learned that a person has been convicted of a disqualifying offense, the Department will issue a notice of disqualification to the person and employer. The notice to the employer will state that the person has been disqualified, but shall not list the offenses resulting in disqualification.

1. The person disqualified from certification shall be immediately terminated from employment as a nurse aide, and his or her certificate shall be deemed revoked.

2. The employer shall report to the Department, in writing, that the employee has been terminated from employment as a nurse aide and the effective date of termination.

3. The person disqualified shall have 30 days from the date of termination of their position as a nurse aide to petition the Department for a hearing on the accuracy of the criminal history record background check, or to show cause why the conviction should not result in the revocation of their certificate. The person's employer shall be notified of any petition received by the Department.

i. Any petition challenging the accuracy of a criminal history shall be forwarded to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1 et seq.

ii. Petitions seeking to establish cause not to revoke the certification of the nurse aide shall be processed by the Criminal Investigation Unit, which shall make an investigation into the circumstances surrounding the conviction, together with any of the criteria for rehabilitation listed at N.J.A.C. 8:43I-2.4. If relief is not granted based upon this investigation, the petitioner shall have the right to a hearing on the denial in the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq.

iii. In all cases, the Department shall notify the person and the person's employer, if known, as to the outcome of the petition. The notification shall state whether the person is to be reinstated or if the person's termination and revocation stands.

8:43I-2.7 Right to hearing

(a) Persons disqualified from certification due to a false sworn statement and application as required by N.J.A.C. 8:43I-2.1(a) shall be granted a hearing only if they are contesting the accuracy of the criminal history record background check. No person so disqualified shall be permitted to establish rehabilitation, nor shall a hearing be granted to provide for an evaluation of rehabilitation pursuant to N.J.S.A. 26:2H-84(d).

(b) Persons disqualified from certification for failure to establish rehabilitation shall be entitled to a hearing challenging the accuracy of the criminal history record background check, the denial of a determination of rehabilitation, or both.

(c) All hearings authorized by this chapter shall be held by and under the rules of the Office of Administrative Law, N.J.A.C. 1:1, pursuant to N.J.S.A. 52:14B-1, et seq.

8:43I-2.8 Penalty for false sworn statement

(a) Any person who submits a false sworn statement pursuant to N.J.A.C. 8:43I-2.1(a) shall be disqualified from certification as a nurse aide in New Jersey, and may be assessed a fine of not more than \$1,000, or both.

(b) Any person disqualified pursuant to (a) above, shall be ineligible to submit an application for certification or to receive criminal history record background check clearance for a period of two years from the date of the disqualification notice. Acceptance of a new application is conditioned upon payment of any outstanding fine balance and the completion of a new and truthful sworn statement and fingerprint impressions as required by N.J.A.C. 8:43I-2.1 and 2.2.

8:43I-2.9 Full certification

(a) A conditionally certified nurse aide will be granted full, unrestricted certification, upon:

1. Completion of a NATCEP and passing the State skills and written or oral exam as required by N.J.A.C. 8:39-43; and
2. Receipt by the Department of the fingerprint supported criminal history record background check from both the Division of State Police and the Federal Bureau of Investigation indicating that either:

- i. the person has no disqualifying convictions; or
- ii. the person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-2.4.

(b) A nurse aide seeking to renew his or her certification will be issued a renewal authorization upon receipt by the Department of the fingerprint supported criminal history record background check indicating that either:

- i. the person has no disqualifying convictions; or
- ii. the person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-2.4.

(c) Determinations that an individual is qualified for certification or recertification as a nurse aide are valid for a period of 180 days from the issuance of the qualification notice. If full certification is not obtained by the 180th day following the issuance of the notice of qualification, a new criminal history report must be obtained. The previous notice of qualification is deemed expired and invalid.

8:43I-2.10 Extension of time for persons renewing certifications

(a) The Department may issue an extension of time for individuals seeking to renew their certification as a nurse aide. Extension will be issued when, for circumstances not within the control of the nurse aide, processing times will not permit the Department to complete the background checks prior to the expiration date of their current certification. The candidate must complete a fingerprint appointment prior to the expiration date of the current certificate. Extension requests are processed by the employer to the Department. Extension requests must be on facility stationery and contain the name of the employer, the name of the nurse aide, the nurse aide's social security number, current certification expiration date, and certification number.

(b) Extensions are valid for 120 days, and are deemed revoked if the nurse aide is disqualified from certification in accordance with this chapter.

(c) Each employer shall retain a copy of the extension authorization on file to prove current certification status of the nurse aide.

8:43I-2.11 Suspension of criminal history record background checks

(a) The Department will suspend the criminal history record background check on any individual who:

1. Has an outstanding arrest warrant in any jurisdiction;
2. Has a pending criminal case that could result in conviction of a disqualifying offense;

3. Is the subject of a criminal investigation being conducted by the Department; or
 4. Has terminated their employment as a conditionally certified nurse aide or has withdrawn or been dropped from an approved NATCEP.
- (b) Suspension of a criminal history record background check means that the Department will hold the application in abeyance and take no formal action until the resolution of the outstanding issue. The individual may be required to resubmit to the fingerprint process as defined at N.J.A.C. 8:43I-2.2 if the time since the initial impressions is greater than 180 days.

SUBCHAPTER 3. PERSONAL CARE ASSISTANTS

8:43I-3.1 Application

- (a) Each applicant for certification as a personal care assistant shall complete and submit an application/affidavit on a form provided by the Department which shall contain:
1. Personal demographic information containing the applicant's name, mailing address, date of birth, social security number, sex, telephone number and either:
 - i. The name of the person's employer if the applicant is employed by a health care facility performing duties as a personal care assistant or in a related position; or
 - ii. The name of the person's PCATCEP;
 2. An attestation under oath that the person has not been convicted of any disqualifying offenses as defined by N.J.A.C. 8:43I-3.3;
 3. The applicant's original and legal signature; and
 4. The seal and signature of a notary public or other person authorized by law to administer oaths.
- (b) Incomplete applications will not be accepted for processing, and will be returned to the applicant for completion. No criminal history record background checks will be released unless the Department is in receipt of a completed application.
- (c) Upon receipt of a properly completed application, the Department will issue a written notice to the applicant indicating if the applicant is qualified for a conditional certification pursuant to N.J.A.C. 8:43I-3.5. Applicants shall present this notice to their employer or prospective employer.

8:43I-3.2 Fingerprint processing

- (a) Each applicant for certification and each person seeking to renew their certification shall submit to a fingerprinting process. Each person shall comply with the procedures established by the Division of State Police pursuant to N.J.A.C. 13:59 for obtaining readable fingerprint impressions.
- (b) Each person required by this subchapter to submit to the fingerprinting process shall be provided with a form which will permit the applicant to obtain the fingerprinting services without prepayment of a fee. The form is restricted to use

by personal care assistant applicants and certified personal care assistants seeking to renew their certificates.

(c) The Department may utilize an archived image of fingerprints previously submitted for certification as a personal care assistant in lieu of the candidate reporting to a fingerprint site. Individuals seeking to renew their certificate are deemed to consent to a retransmission of their fingerprint images, as required by N.J.S.A. 26:2H-83 et seq.

(d) No certificate shall be issued, no conditional certification granted or certification renewed unless the person has complied with the provisions of this subchapter, including but not limited to N.J.A.C. 8:43I-3.1 and this section.

8:43I-3.3 Disqualification of applicants and persons seeking to renew certifications

(a) A person shall be disqualified from certification as a personal care assistant if they have been convicted of any of the following crimes and offenses, unless the person has demonstrated rehabilitation in accordance with N.J.A.C. 8:43I-3.4:

1. In New Jersey, any crime or disorderly persons offense:
 - i. Involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:11-1 et seq., 2C:12-1 et seq., 2C:13-1 et seq., 2C:14-1 et seq., or 2C:15-1 et seq.;
 - ii. Against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:24-1 et seq.;
 - iii. Involving theft as set forth in N.J.S.A. 2C:20-1 et seq.; or
 - iv. Involving any controlled dangerous substance or controlled dangerous substance analog as set forth in N.J.S.A. 2C:35-1 et seq., but not including those offenses defined at N.J.S.A. 2C:35-10(a)4 (possession of less than 50 grams of marijuana and possession of less than five grams of hashish).
2. In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in (a)1 above.
3. For the purposes of this chapter, conviction of an inchoate act as defined by N.J.S.A. 2C:5-1 and 2C:5-2, related to any crime or disorderly persons offense listed in (a)1 above shall be construed to be a conviction of the offense attempted or conspired to.

(b) A person shall be disqualified from certification if the person refuses to consent to, or cooperate in, the securing of a criminal history record background check, inclusive of failure to respond to written requests for additional information or failing to complete the required fingerprint appointment to obtain the fingerprint impressions needed to comply with this chapter.

(c) A person shall be disqualified from certification if that person files a false sworn statement in the application described at N.J.A.C. 8:43I-3.1(a), and shall not be permitted to request a determination of rehabilitation as defined at N.J.A.C. 8:43I-3.4.

8:43I-3.4 Requests for a determination of rehabilitation

(a) Any applicant or currently certified personal care assistant convicted of a disqualifying offense listed at N.J.A.C. 8:43I-3.3(a) may request that the Department issue a determination of rehabilitation which would permit the person to obtain or retain certification as a personal care assistant. The standard for the issuance of a determination of rehabilitation is that the person affirmatively demonstrates rehabilitation by the production of clear and convincing evidence. The Department must weigh the following factors when evaluating a request for a determination of rehabilitation, which must be clearly documented by the applicant or personal care assistant:

1. The nature and responsibilities of the position which the applicant or certified personal care assistant would hold, has held, or currently holds, as the case may be;
2. The nature and seriousness of the offense(s);
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the person at the time of the offense;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense; and
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the applicant or personal care assistant under their supervision.

(b) The follow materials are considered when the Department evaluates the degree of rehabilitation of the applicant with a criminal history:

1. Each applicant requesting a determination of rehabilitation shall submit to the Department sufficient information in the request for a determination of rehabilitation or the request will be denied or delayed. The following documents are required
 - i. A personal statement which describes, in detail, each offense, including the details of the offense and the circumstances of offense. The statement shall also contain a statement which describes the activities of the applicant since their conviction including, but not limited to:
 - (1). Changes in social circumstances;
 - (2). Any additional vocational and/or educational schooling;and
 - (3). Any substance abuse counseling.
 - ii. A letter from either the applicant's PCATCEP (if the applicant is applying for certification) or the health care facility that employs the personal care assistant (if renewing) which provides an assessment of the performance of the skills and safety of the applicant and/or personal care assistant;

- iii. Proof of drug counseling and/or evaluation, if the offense is related to unlawful possession or use of controlled dangerous substances; and
 - iv. If the applicant has ever been on probation or parole, a letter from the applicant's probation or parole officer indicating that the applicant is in compliance with the terms of their supervision, or has been released.
2. In addition, the applicant may submit other documents in support of a determination to include, but not limited to
- i. Personal (non-work related) references;
 - ii. Statements of support from members of the clergy;
 - iii. Awards and certificates earned; and
 - iv. Any other documentation which the candidate feels may assist the Department in reaching a favorable conclusion on behalf of the Department.
- (c) If the Department issues a determination of rehabilitation to an applicant or personal care assistant, the applicant or personal care assistant shall not be required to submit the information described in (a) above in future renewal processing. This shall not apply if the person has been convicted of a disqualifying offense subsequent to the issuance of the determination of rehabilitation, in which case the applicant or personal care assistant shall comply with the provisions of (a) above.
- (d) A person disqualified from certification for filing a false sworn statement in accordance with N.J.A.C. 8:43I-3.3(c) shall not be permitted to request a determination of rehabilitation.
- (e) A person disqualified from certification for failure to comply with the requirements of this chapter in accordance with N.J.A.C. 8:43I-3.3(b), except those disqualified for a false application pursuant to N.J.A.C. 8:43I-3.3(c), shall not be permitted to request a determination of rehabilitation until such time as the person has fully complied with the requirements of this chapter. Such compliance may include, but is not limited to, obtaining a current or updated criminal history record from the Division of State Police or the Federal Bureau of Investigation, or both.

8:43I-3.5 Conditional certification

- (a) An applicant for certification as a personal care assistant may be issued a conditional certification and may be employed in the capacity of a personal care assistant for a period of up to 120 days, as follows:
- 1. The Department will issue a conditional certification to the applicant for a period not to exceed 120 days if the application demonstrates that the candidate has provided a sworn statement indicating that he or she has not been convicted of any of the offenses listed at N.J.S.A. 8:43I-2.3, and has not been placed on the Department's Abuse Registry pursuant to N.J.A.C. 8:39-43.7(b).
 - 2. All conditional certification documents issued by the Department shall bear the issue and expiration date, and are non-renewable.

3. Nothing in this chapter shall be construed as to permit an individual with a conditional certification authority to perform those duties of a personal care assistant for which the applicant has not yet been trained or authorized to perform.

4. If a conditionally certified applicant is disqualified from certification, the Department shall issue a notice to the applicant and employer, if known. The notice to the employer shall state that the applicant is disqualified, but shall not disclose the offenses upon which the disqualification is based.

- i. Upon receipt of the notice, the employer or sponsor agency shall immediately remove the person from duties which require regular contact with patients, residents or clients. The person shall not have unsupervised contact with any patient, resident or client, nor shall the property of those persons be entrusted to any disqualified applicant.
- ii. If the employer or sponsor agency receives notice from the Department that the applicant has filed for a hearing to contest the accuracy of their criminal history record background investigation, the person may remain employed pending a final decision on the person's petition, but the employer shall not permit the person to have unsupervised contact with elderly patients, residents or clients.
- iii. The Department will notify the employer or sponsor agency of any requests for hearings, and the results of any hearings, within five days of receipt of such request or disposition.

8:43I-3.6 Convictions occurring after initial criminal record history background check clearance

(a) The Department will be notified by the New Jersey State Police of convictions occurring after the applicant is initially qualified pursuant to this chapter, in accordance a system developed under the authority of N.J.S.A. 26:2H-83(a).

(b) Once the Department has learned that a person has been convicted of a disqualifying offense, the Department shall issue a notice of disqualification to the person and employer. The notice to the employer or sponsor agency will state that the person has been disqualified, but shall not list the offenses resulting in disqualification.

1. The person disqualified from certification shall be immediately terminated from employment as a personal care assistant, and his or her certificate shall be deemed revoked.

2. The employer or sponsor agency shall report to the Department, in writing, that the employee has been terminated from employment as a personal care assistant and the effective date of termination.

3. The person disqualified shall have 30 days from the date of termination of their position as a personal care assistant to petition the Commissioner for a hearing on the accuracy of the criminal history record background check, or to show cause why the conviction should not result in the revocation of their

certificate. The Commissioner shall notify the person's employer of any petition within five days of receipt.

i. Any petition challenging the accuracy of a criminal history shall be forwarded to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1.1 et seq.

ii. Petitions seeking to establish cause not to revoke the certification of the personal care assistant shall be processed by the Criminal Investigation Unit, which shall make an investigation into the circumstances surrounding the conviction, together with any of the criteria for rehabilitation listed at N.J.A.C. 8:43I-3.4. If relief is not granted based upon this investigation, the petitioner shall have the right to a hearing on the denial in the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq.

c. In all cases, the Department shall notify the person and the person's employer, if known, as to the outcome of the petition. The notification shall state whether the person is to be reinstated or if the person's termination and revocation stands.

8:43I-3.7 Right to hearing

(a) Persons disqualified from certification due to a false sworn statement and application as required by N.J.A.C. 8:43I-3.1(a) shall be granted a hearing only if they are contesting the accuracy of the criminal history record background check. No person so disqualified shall be permitted to establish rehabilitation, nor shall a hearing be granted to provide for an evaluation of rehabilitation pursuant to N.J.S.A. 26:2H-84(d).

(b) Persons disqualified from certification for failure to establish rehabilitation shall be entitled to a hearing challenging the accuracy of the criminal history record background check, the denial of a determination of rehabilitation, or both.

(c) All hearings authorized by this chapter shall be held by and under the rules of the Office of Administrative Law, N.J.A.C. 1:1, pursuant to N.J.S.A. 52:14B-1, et seq.

8:43I-3.8 Penalty for false sworn statement

(a) Any person who submits a false sworn statement pursuant to N.J.A.C. 8:43I-3.1(a) shall be disqualified from certification as a personal care assistant in New Jersey, and may be assessed a fine of not more than \$1,000, or both.

(b) Any person disqualified pursuant to paragraph a, above, shall be ineligible to submit an application for certification or to receive criminal history record background check clearance for a period of two years from the date of the disqualification notice. Acceptance of a new application is conditioned upon payment of any outstanding fine balance and the completion of a new and truthful sworn statement and fingerprint impressions as required by N.J.A.C.8:43I 3.1 and 3.2.

8:43I-3.9 Full certification

(a) A conditionally certified personal care assistant will be granted full, unrestricted certification, upon:

1. Completion of a PCATCEP and passing the State skills and written or oral exam as required by N.J.A.C. 8:36-1.8, and
 2. Receipt by the Department of the fingerprint supported criminal history record background check from both the Division of State Police and the Federal Bureau of Investigation indicating that either:
 - i. the person has no disqualifying convictions; or
 - ii. the person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-3.4.
- (b) A personal care assistant seeking to renew his or her certification will be issued a renewal authorization upon receipt by the Department of the fingerprint supported criminal history record background check from both the Division of State Police and the Federal Bureau of Investigation indicating that either:
- i. the person has no disqualifying convictions; or
 - ii. the person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-3.4.
- (c) Determinations that an individual is qualified for certification or recertification as a personal care assistant are valid for a period of 180 days from the issuance of the qualification notice. If full certification is not obtained by the 180th day following the issuance of the notice of qualification, a new criminal history report must be obtained. The previous notice of qualification is deemed expired and invalid.

8:43I-3.10 Extension of time for persons renewing certifications

- (a) The Department may issue an extension of time for individuals seeking to renew their certification as a personal care assistant. Extensions will be issued when, for circumstances not within the control of the personal care assistant, processing times will not permit the Department to complete the background checks prior to the expiration date of their current certification. The personal care assistant must complete a fingerprint appointment prior to the expiration date listed on the current certification document. Extensions are processed by the employer to the Department. Extension requests must be on facility stationery and contain the name of the employer, the name of the personal care assistant, the personal care assistant's social security number, current certification expiration date, and certification number.
- (b) Extensions are valid for 120 days, and are deemed revoked if the personal care assistant is disqualified from certification in accordance with this chapter.
- (c) Each employer shall retain a copy of the extension authorization on file to prove current certification status of the personal care assistant.

8:43I-3.11 Suspension of criminal history record background checks

- (a) The Department will suspend the criminal history record background check on any individual who:
1. Has an outstanding arrest warrant in any jurisdiction;
 2. Has a pending criminal case that could result in conviction of a disqualifying offense;

3. Is the subject of a criminal investigation being conducted by the Department; or

4. Has terminated their employment as a conditionally certified personal care assistant or has withdrawn or been dropped from an approved PCATCEP.

(b) Suspension of a criminal history record background check means that the Department will hold the application in abeyance and take no formal action until the resolution of the outstanding issue. The individual may be required to resubmit to the fingerprint process as defined at N.J.A.C. 8:43I-3.2 if the time since the initial impressions is greater than 180 days.

SUBCHAPTER 4. ASSISTED LIVING ADMINISTRATORS

8:43I-4.1 Application

(a) Each applicant for certification as an assisted living administrator shall complete and submit an application/affidavit on a form provided by the Department which shall contain:

1. Personal demographic information containing the applicant's name, mailing address, date of birth, social security number, sex, telephone number and either:

i. The name of the applicant's employer if the applicant is employed by a health care facility performing duties as a assisted living administrator or in a related position; or

ii. The name of the applicant's prospective assisted living employer, if any;

2. An attestation under oath that the person has not been convicted of any disqualifying offenses as defined by N.J.A.C. 8:43I-4.3;

3. The applicant's original and legal signature; and

4. The seal and signature of a notary public or other person authorized by law to administer oaths.

(b) Incomplete applications will not be accepted for processing, and will be returned to the applicant for completion. No criminal history record background checks will be released unless the Department is in receipt of a completed application.

8:43I-4.2 Fingerprint processing

(a) Each applicant for certification and each person seeking to renew their certification shall submit to a fingerprinting process. Each person shall comply with the procedures established by the Division of State Police pursuant to N.J.A.C. 13:59 for obtaining readable fingerprint impressions.

(b) Each person required to submit to the fingerprinting process shall be provided with a form which will permit the applicant to obtain the fingerprinting services. The form is restricted to use by assisted living administrator applicants and certified assisted living administrators seeking to renew their certificates. All costs of this process are to be paid by the applicant, pursuant to N.J.S.A. 26:2H-7.19.

(c) If an individual has an archived image of their fingerprint impressions on file with the Division of State Police which has been filed for certification as a assisted living administrator, the person may request that the Department use the archived image in lieu of reporting for a new fingerprinting process. The renewal application will contain language which will authorize the Department to re-transmit the archived image. All costs of this process are to be paid by the applicant, pursuant to N.J.S.A. 26:2H-7.19.

(d) No certificate shall be issued, no conditional certification granted or certification renewed unless the person has complied with the provisions of this subchapter, including but not limited to N.J.A.C. 8:43I-4.1 and this section.

8:43I-4.3 Disqualification of applicants and persons seeking to renew certifications

(a) A person shall be disqualified from certification as an assisted living administrator if they have been convicted of any of the following crimes and offenses, unless the person has demonstrated rehabilitation in accordance with N.J.A.C. 8:43I-4.4:

1. In New Jersey, any crime or disorderly persons offense:
 - i. Involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:11-1 et seq., 2C:12-1 et seq., 2C:13-1 et seq., 2C:14-1 et seq., or 2C:15-1 et seq.;
 - ii. Against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:24-1 et seq.;
 - iii. Involving theft as set forth in N.J.S.A. 2C:20-1 et seq.; or
 - iv. Involving any controlled dangerous substance or controlled dangerous substance analog as set forth in N.J.S.A. 2C:35-1 et seq., but not including those offenses defined at N.J.S.A. 2C:35-10(a)4 (possession of less than 50 grams of marijuana and possession of less than five grams of hashish).
2. In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in (a)1 above.
3. For the purposes of this chapter, conviction of an inchoate act as defined by N.J.S.A. 2C:5-1 and 2C:5-2, related to any crime or disorderly persons offense listed in (a)1 above shall be construed to be a conviction of the offense conspired to or attempted.

(b) A person shall be disqualified from certification if the person refuses to consent to, or cooperate in, the securing of a criminal history record background check, inclusive of failure to respond to written requests for additional information.

(c) A person shall be disqualified from certification if that person files a false sworn statement in the application described at N.J.A.C. 8:43I-4.1(a), and shall not be permitted to request a determination of rehabilitation as defined at N.J.A.C. 8:43I-4.4.

8:43I-4.4 Requests for a determination of rehabilitation

(a) Any applicant or currently certified assisted living administrator convicted of a disqualifying offense listed at N.J.A.C. 8:43I-4.3(a) may request that the Department issue a determination of rehabilitation which would permit the person to obtain or retain certification as an assisted living administrator. The standard for the issuance of a determination of rehabilitation is that the person affirmatively demonstrates rehabilitation by the production of clear and convincing evidence. The Department must weigh the following factors when evaluating a request for a determination of rehabilitation, which must be clearly documented by the applicant or assisted living administrator:

1. The nature and responsibilities of the position which the applicant or certified assisted living administrator would hold, has held or currently holds, as the case may be;

2. The nature and seriousness of the offense(s);
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the person at the time of the offense;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense; and
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the applicant or assisted living administrator under their supervision.

(b) The following materials are considered when the Department evaluates the degree of rehabilitation of the applicant with a criminal history:

1. Each applicant requesting a determination of rehabilitation shall submit to the Department sufficient information in the request for a determination of rehabilitation or the request will be denied or delayed. The following documents are required:

- i. A personal statement which describes, in detail, each offense, including the details of the offense and the circumstances of offense. The statement shall also contain a statement which describes the activities of the applicant since their conviction including, but not limited to:

- (1). Changes in social circumstances;

- (2). Any additional vocational and/or educational schooling;

and

- (3). Any substance abuse counseling.

- ii. A letter from either the health care facility that employs the applicant which provides an assessment of the performance of the competence and safety of the applicant;

- iii. Proof of drug counseling and/or evaluation, if the offense is related to unlawful possession or use of controlled dangerous substances; and

- iv. If the applicant has ever been on probation or parole, a letter from the applicant's probation or parole officer indicating that the applicant is in compliance with the terms of their supervision, or has been released.

2. In addition, the applicant may submit other documents in support of a determination to include, but not limited to
 - i. Personal (non-work related) references;
 - ii. Statements of support from members of the clergy;
 - iii. Awards and certificates earned; and
 - iv. Any other documentation which the candidate feels may assist the Department in reaching a favorable conclusion on behalf of the Department.

(c) If the Department issues a determination of rehabilitation to an applicant or assisted living administrator, the applicant or assisted living administrator shall not be required to submit the information described in (a) above, in future renewal processing. This shall not apply if the person has been convicted of a disqualifying offense subsequent to the issuance of the determination of rehabilitation, in which case the applicant or assisted living administrator shall comply with the provisions of (a) above.

(d) A person disqualified from certification for filing a false sworn statement in accordance with N.J.A.C. 8:43I-4.3(c) shall not be permitted to request a determination of rehabilitation.

(e) A person disqualified from certification for failure to comply with the requirements of this chapter in accordance with N.J.A.C. 8:43I-4.3(b), except those disqualified for submission of a false application pursuant to N.J.A.C. 8:43I-4.3(c), shall not be permitted to request a determination of rehabilitation until such time as the person has fully complied with the requirements of this chapter. Such compliance may include, but is not limited to, obtaining a current or updated criminal history record from the Division of State Police or the Federal Bureau of Investigation, or both.

8:43I-4.5 Conditional certification

(a) An applicant for certification as an assisted living administrator may be issued a conditional certification and may be employed in the capacity of a assisted living administrator for a period of up to 120 days, as follows:

1. Only those applicants who have filed a sworn statement with the Department on the application described in N.J.A.C. 8:43I-4.1(a) which attests that the person has not been convicted of a disqualifying offense shall be eligible for conditional certification. Any employer seeking to employ a conditionally certified assisted living administrator shall obtain a copy of the application from the employee and maintain it on file until the applicant become fully certified or is disqualified from certification.

2. Only those applicants who have successfully completed an approved training program and competency examination as defined by N.J.A.C. 8:36-1.5(a)3 shall be issued a conditional certification.

3. An applicant meeting the requirements of (a)1 and 2 above, is deemed conditionally certified from the first day of employment through the 120th day of employment, provided that the applicant is not sooner disqualified from certification pursuant to this chapter.

4. Nothing in this chapter shall be construed as to permit an individual with a conditional certification authority to perform those duties of a assisted living administrator for which the applicant has not yet been trained or authorized to perform.

5. If a conditionally certified applicant is disqualified from certification, the Department shall issue a notice to the applicant and employer, if known. The notice to the employer shall state that the applicant is disqualified, but shall not disclose the offenses upon which the disqualification is based.

i. Upon receipt of the notice, the employer shall immediately remove the person from duties as an assisted living administrator and those duties which require regular contact with patients, residents or clients. The person shall not have unsupervised contact with any patient, resident or client, nor shall the property of those persons be entrusted to any disqualified applicant. The employer shall provide notice, in writing, to the Department that it has removed the person from duties as an assisted living administrator and the effective date of the removal.

ii. The Department will notify the employer of any requests for hearings, and the results of any hearings, within five days of receipt of such request or disposition.

8:43I-4.6 Convictions occurring after initial criminal record history background check clearance

(a) The Department will be notified by the New Jersey State Police of convictions occurring after the applicant is initially qualified pursuant to this chapter, in accordance a system developed under the authority of N.J.S.A. 26:2H-83(a).

(b) Once the Department has learned that a person has been convicted of a disqualifying offense, the Department will issue a notice of disqualification to the person and employer. The notice to the employer will state that the person has been disqualified, but shall not list the offenses resulting in disqualification.

1. The person disqualified from certification shall be immediately terminated from employment as an assisted living administrator, and his or her certificate shall be deemed revoked.

2. The employer shall report to the Department, in writing, that the employee has been terminated from employment as an assisted living administrator and the effective date of termination.

3. The person disqualified shall have 30 days from the date of termination of their position as an assisted living administrator to petition the Commissioner for a hearing on the accuracy of the criminal history record background check, or to show cause why the conviction should not result in the revocation of their certificate. The person's employer shall be notified of any petition within five days of receipt by the Commissioner.

i. Any petition challenging the accuracy of a criminal history shall be forwarded to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1 et seq.

ii. Petitions seeking to establish cause not to revoke the certification of the assisted living administrator shall be processed by the Criminal

Investigation Unit, which shall make an investigation into the circumstances surrounding the conviction, together with any of the criteria for rehabilitation listed at N.J.A.C. 8:43I-4.4. If relief is not granted based upon this investigation, the petitioner shall have the right to a hearing on the denial in the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq.

iii. In all cases, the Department shall notify the person and the person's employer, if known, as to the outcome of the petition. The notification shall state whether the person is to be reinstated or if the person's termination and revocation stands.

8:43I-4.7 Right to hearing

(a) Persons disqualified from certification due to a false sworn statement and application as required by N.J.A.C. 8:43I-4.1(a) shall be granted a hearing only if they are contesting the accuracy of the criminal history record background check. No person so disqualified shall be permitted to establish rehabilitation, nor shall a hearing be granted to provide for an evaluation of rehabilitation pursuant to N.J.S.A. 26:2H-84(d).

(b) Persons disqualified from certification for failure to establish rehabilitation shall be entitled to a hearing challenging the accuracy of the criminal history record background check, the denial of a determination of rehabilitation, or both.

(c) All hearings authorized by this chapter shall be held by and under the rules of the Office of Administrative Law, N.J.A.C. 1:1. pursuant to N.J.S.A. 52:14B-1 et seq.

8:43I-4.8 Penalty for false sworn statement

(a) Any person who submits a false sworn statement pursuant to N.J.A.C. 8:43I-4.1(a) shall be disqualified from certification as a assisted living administrator in New Jersey, and may be assessed a fine of not more than \$1,000, or both.

(b) Any person disqualified pursuant to paragraph a, above, shall be ineligible to submit an application for certification or to receive criminal history record background check clearance for a period of two years from the date of the disqualification notice. Acceptance of a new application is conditioned upon payment of any outstanding fine balance and the completion of a new and truthful sworn statement and fingerprint impressions as required by N.J.A.C. 8:43I-4.1 and 4.2.

8:43I-4.9 Full certification

(a) A conditionally certified assisted living administrator will be granted full, unrestricted certification, upon:

1. Completion of an approved training program and passing the State written exam as required by N.J.A.C. 8:36-1.5(a)3i and ii, and

2. Receipt by the Department of the fingerprint supported criminal history record background check from both the Division of State Police and the Federal Bureau of Investigation indicating that either:

i. The person has no disqualifying convictions; or

- ii. The person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-4.4.

(b) An assisted living administrator seeking to renew his or her certification will be issued a renewal authorization upon receipt by the Department of the fingerprint supported criminal history record background check from both the Division of State Police and the Federal Bureau of Investigation indicating that either:

- i. The person has no disqualifying convictions; or
- ii. The person has disqualifying convictions, but the Department

has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-4.4.

(c) Determinations that an individual is qualified for certification or recertification as an assisted living administrator are valid for a period of 180 days from the issuance of the qualification notice. If full certification is not obtained by the 180th day following the issuance of the notice of qualification, a new criminal history report must be obtained. The previous notice of qualification is deemed expired and invalid.

8:43I-4.10 Extension of time for persons renewing certifications

(a) The Department may issue an extension of time for individuals seeking to renew their certification as an assisted living administrator. Extensions will be issued when, for circumstances not within the control of the assisted living administrator, processing times will not permit the Department to complete the background checks prior to the expiration date of their current certification. The assisted living administrator must complete a fingerprint appointment prior to the expiration date listed on their current certification document. Extension requests must contain: the name of the employer, the name of the assisted living administrator, the assisted living administrator's social security number, current certification date, and certification number.

(b) Extensions are valid for 120 days, and are deemed revoked if the assisted living administrator is disqualified from certification in accordance with this chapter.

(c) Each employer shall retain a copy of the extension authorization on file to prove current certification status of the assisted living administrator.

8:43I-4.11 Suspension of criminal history record background checks

(a) The Department will suspend the criminal history record background check on any individual who:

1. Has an outstanding arrest warrant in any jurisdiction;
2. Has a pending criminal case that could result in conviction of a disqualifying offense;
3. Is the subject of a criminal investigation being conducted by the Department; or

4. Has terminated their employment as a conditionally certified assisted living administrator or has withdrawn or been dropped from an approved CALA training program.

(b) Suspension of a criminal history record background check means that the Department will hold the application in abeyance and take no formal action until the resolution of the outstanding issue. The individual may be required to resubmit to the fingerprint process as defined at N.J.A.C. 8:43I-4.2 if the time since the initial impressions is greater than 180 days.

8:43I-4.12 Payment of fees

Pursuant to N.J.S.A. 26:2H-7.19, the applicant for certification as an assisted living administrator or certified assistant living administrator, as the case may be, shall assume the cost of the criminal history record background check conducted pursuant to this chapter. The Department may withhold the release of the criminal history record background check results if the applicant fails to pay the cost of the fingerprint checks, tenders a bad check or invalid credit card, until such time as the costs are paid in full.

SUBCHAPTER 5. CRIMINAL BACKGROUND INVESTIGATION REGISTRY

8:43I-5.1 Central criminal history record background check registry

(a) The Department shall maintain a central criminal history record background check registry on each applicant who files an application pursuant to this chapter. The registry shall include the following data elements, which shall be public records:

1. The full name of the applicant;
2. The applicant's mailing address;
3. The applicant's certification number, if issued;
4. The date any application is received;
5. The certificate(s) for which the background check was conducted;
6. The date the New Jersey criminal history is received from the Division of State Police;
7. The date the Federal criminal history check is received from the Federal Bureau of Investigation (FBI);
8. The employer, if known;
9. The date on which any certification extension was issued;
10. A listing of whether the applicant was qualified or disqualified from certification;
11. If a hearing was requested in the event of a denial; and
12. The results of any hearing, and the final agency decision result that was issued to any hearing.

(b). Consistent with N.J.S.A. 47:1A-1 et seq., the following information shall not be released in any form, for the reasons indicated:

1. The applicant's social security number (Privacy Act of 1974 (P.L. 93-579), N.J.S.A. 47:1A-5(a));

2. The specific criminal history information, including specific information about arrests and convictions received from the New Jersey State Police or the FBI. When an individual is disqualified from certification, the public record will identify that the individual has a disqualifying conviction, but will not specify the conviction(s) was, and whether the person filed a false application for certification. (N.J.S.A. 26:2H-84(g) and 28 CFR 20.33(b));
3. Information in any document otherwise deemed a public record shall have any information relating to specific criminal history information redacted prior to release (N.J.S.A. 26:2H-84(g) and 28 CFR 20.33(b)) and
4. Any telephone number, unless the Department can ascertain that the telephone number is not a non-published number (N.J.S.A. 47:1A-5(a)).